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Attorneys for Petitioner

**BEFORE THE FEDERAL COMMUNICATION COMMISSION
Washington, D.C. 20554**

**IN THE MATTER OF HOMESONTV'S
PETITION FOR EXEMPTION FROM
CLOSED CAPTIONING
REQUIREMENTS**

Docket No. 06-181

Case ID No. CGB-CC-0177

**REPLY TO THE OPPOSITION OF TELECOMMUNICATIONS FOR THE DEAF
AND HARD OF HEARING, INC.**

HomesOnTV.com (formally "The Home Show") hereby replies to the opposition ("Opposition") of Telecommunications for the Deaf and Hard of Hearing, Inc. et al ("TDI") to HomesOnTV's petition ("Petition") seeking exemption from the Federal Communication Commission's ("Commission") closed captioning requirements set forth in Section 79.1(b)(1) of the Commission's Rules.¹

On December 27, 2005, HomesOnTV submitted its Petition for exemption from the Commission's closed captioning requirements pursuant to the undue burden standard in 47 C.F.R. Section 79.1(f) of the Commission's Rules ("Undue Burden Exemption").² In

¹ This Reply to Comments is timely filed within the 40-day period, ending May 7, 2007, established in the Commission's November 21, 2006 *Public Notice*.

² The Commission has authority to grant a petition for exemption from closed captioning requirements upon a showing that compliance with the requirements would impose an undue burden on the video programming provider or video owner. *See* 47 U.S.C. § 613(e). Congress defines "undue burden" as a "significant difficulty or expense." *Id.*

1 addition to its original filing, HomesOnTV also submitted supplemental information on
2 both December 31, 2005, and March 6, 2006.³

3 **As** required by the Commission's Rules, the sworn affidavit of Jeanette Daley,
4 Executive Producer of HomesOnTV, is attached to this Reply as "Exhibit D" and
5 integrated as part of the original Petition.⁴ As exhibited by HomesOnTV's Petition,
6 affidavit, and Reply, HomesOnTV is automatically exempt from closed captioning
7 requirements under the primarily textual programming self-implementing exemption.⁵ In
8 the event that the Commission decides that a self-implementing exemption does not apply,
9 HomesOnTV's submissions also provide sufficient evidence to demonstrate that
10 HomesOnTV's compliance with closed captioning requirements would impose both
11 operational and economic undue burdens. HomesOnTV qualifies under the Undue Burden
12 Exemption.

13 **I. HomesOnTV is Exempt Under the Primarily Textual Programming Self-**
14 **Implementing Exemption, 47 C.F.R. Section 79.1(d)(4).**

15 In its Opposition, TDI compares HomesOnTV to a form of home shopping
16 programming that does not qualify under the primarily textual exemption.⁶ The type of
17 video programming produced by HomesOnTV, however, is highly distinguishable from a
18 home shopping program. The unique nature of HomesOnTV's programming, and its use
19 of character-generated text, allows it to qualify under the primarily textual programming
20 self-implementing exemption.

22 ³ See Exhibit B: HomesOnTV's Petition and Supplemental Submissions.

23 ⁴ See 47 C.F.R. §§ 79.1(f)(2)-(3), 79.1(f)(9); Exhibit D: Affidavit of Jeanette Daley ("Affidavit").

24 ⁵ See 47 C.F.R. Section 79.1(d)(4).

25 ⁶ Telecommunications for the Deaf and Hard of Hearing, Inc. et al, Comment and Opposition, p. 6 (March 2, 2007)
26 ("Comment and Opposition").

1 111 the absence of closed captioning, HomesOnTV nevertheless provides all critical
2 portions of information via character-generated text to persons with hearing disabilities.
3 Whereas a home shopping program only shows on screen text for product names and
4 prices while excluding all other audible information, HomesOnTV projects all essential
5 information conveyed to a television viewer as on screen text.⁷ Specifically, HomesOnTV
6 provides all essential audible information including property descriptions (i.e., specific
7 addresses via the website, community name, phone number, price, type of home such as
8 single family dwellings, condos, etc., number of beds, number of bathrooms, square
9 footage, location, area, options, details, and amenities), price, incentives, disclaimers, and
10 each builder's website address.⁸

11 The Commission has found that similar character-generated text, functioning as a
12 graphic display of the content of the audible portion of the programming, is an adequate
13 substitute to closed captioning that is exempt under the primarily textual self-
14 implementing exemption.⁹ Therefore, HomesOnTV's qualification under this self-
15 implementing exemption ensures that no actual harm is or will be experienced by persons
16 with hearing disabilities.

17 **11. HomesOnTV Presents Sufficient Evidence to Demonstrate that Compliance**
18 **with Closed Captioning Requirements Would Impose an Undue Burden.**

19 If the Commission determines that HomesOnTV does not qualify under the
20 primarily textual self-implementing exemption, HomesOnTV has provided sufficient
21 evidence to demonstrate that compliance with closed captioning requirements would
22 impose an undue burden. Despite the arguments set forth by TDI, HomesOnTV provides

23

⁷ See Affidavit, ¶ 5.

24 ⁸ *Id.*

25 ⁹ See *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*,
26 Report and Order, 13 FCC Rcd 3272, ¶ 201 (1997) (“*Report and Order*”).

sufficient evidence in the form of (1) information as to the nature and cost of closed captioning for HomesOnTV, (2) a detailed description of the impact that closed captioning costs will have on HomesOnTV's operations, (3) information regarding HomesOnTV's financial resources, and (4) information regarding the type of operations involved in the production of HomesOnTV.¹⁰

a. First Factor: The Nature and Cost of Closed Captioning for HomesOnTV.

In determining whether to grant a petition for exemption from closed captioning requirements, the Commission looks to whether the petitioner:

- (1) sought competitive pricing from multiple sources;
- (2) submitted copies of the correspondence received from such captioning companies, indicating a range of quotes;
- (3) provided details regarding its financial resources; and
- (4) sought any means to recoup the cost of closed captioning, such as through grants or sponsorships."

In addition to these four factors, the Commission has determined that petitioners must make an effort to solicit captioning assistance from the distributors of its programming.¹²

HomesOnTV has sought and received competitive bids for closed captioning from Transfer West Duplication and Media Images,¹³ Closed captioning costs between \$227.00

¹⁰ The information provided by HomesOnTV satisfies the four factors that must be considered by the Commission when determining whether closed captioning requirements impose an undue burden on a petitioner. See 47 U.S.C. § 613(e); 47 C.F.R. § 79.1(f).

¹¹ *Outland Sports, Inc., Video Programming Accessibility, Petition for Waiver of Closed Captioning Requirements*, 16 FCC Rcd 13605 (2001); See also *The Wild Outdoors, Video Programming Accessibility, Petition for Waiver of Closed Captioning Requirements*, 16 FCC Rcd 13611 (2001).

¹² *Report and Order*, 13 FCC Rcd at 3366

¹³ See Exhibit A: Rate Quotes from Transfer West Duplication and Media Images; Affidavit, ¶ 6.

1 and \$575.00 per thirty-minute show.¹⁴ Depending on the quality of service rendered, and
2 the amount of time required to equip each show with closed captioning, the closed
captioning costs for HomesOnTV for two thirty-minute shows per week, fifty-two weeks
4 per year, would range from \$23,608.00 to \$59,800.00 annually.¹⁵ These costs would
5 impose an undue financial burden upon HomesOnTV.

6 HomesOnTV has also provided details regarding its financial resources.
7 HomesOnTV has been forthcoming in regard to the costs associated with producing its
8 shows, its 2006 gross revenues, and the undue economic burden that closed captioning
9 would impose on HomesOnTV.¹⁶

10 No grants or sponsorships are currently available to HomesOnTV. But in addition
11 to seeking competitive bids from closed captioning companies, HomesOnTV has also
12 sought assistance from its distributors. HomesOnTV's distributors have refused to cover
13 the costs for closed captioning. One distributor, KVBC TV, has presented a tentative,
14 informal pricing scheme for closed captioning that would be less than both of the outside
15 providers' quotes.¹⁷ But acquiring closed captioning through the distributor would still
16 present undue financial and operational burdens upon HomesOnTV.¹⁸

17
18 **b. Second and Fourth Factors: The Impact on the Operation and
Production of HomesOnTV.**

19 In addition to the financial burden, closed captioning requirements would impose
20 an undue burden upon the operation and production of HomesOnTV in two critical areas:

21
22 ¹⁴ *Id.*

23 ¹⁵ *See* Affidavit, ¶6.

24 ¹⁶ *Id.* at ¶¶ 3, 6, 7.

25 ¹⁷ *See* Exhibit C: Email from KVBC TV.

26 ¹⁸ *Id.* at ¶ 8 (KVBC TV has not placed its pricing scheme into a formal bid to HomesOnTV)

(1) The bars of text created by closed captioning would block critical character-generated information and (2) closed captioning requirements could force HomesOnTV's production schedule to jump from a ten-day period to a twenty-day period."

HomesOnTV already conveys all essential information via character-generated text. The on screen text functions as a substitute as equally beneficial and effective as closed captioning. The screen formatting functions identically to that of closed captioning because almost all of the character-generated text appears at the bottom of the screen. If HomesOnTV was required to comply with closed captioning requirements, the majority of the existing on screen text would be covered by closed captioning text bars. Some information that is only spoken once throughout the program, is prominently displayed as character-generated text throughout significant portions of the program. But closed-captioning text bars would cover this essential information. Although closed captioning would allow the information to appear once, it would not provide the sustained period of time needed for a television viewer to write down the information. Because of the format used by HomesOnTV, closed captioning could create an even greater impediment to persons with hearing disabilities because closed captioning text bars would both block essential information and deprive viewers of the time needed to write down property information.

Closed captioning requirements would not only block character-generated text, but the requirements would also significantly delay HomesOnTV's time-sensitive production schedule.²⁰ New homes sell very quickly in Las Vegas. In addition to fast-paced sales, changes in new home prices, amenities, incentives, disclaimers, and options occur frequently. HomesOnTV has sustained a competitive edge because of its ability to ensure

¹⁹ *Id.* at 9.

²⁰ *Id.*

1 builders that last-minute adjustments to descriptive information on new homes can be
2 made as sudden changes in the market or properties occur.

3 The production schedule involves the following steps: (1) Selling program time to a
4 builder, (2) writing the script and character-generated text, (3) scheduling a tentative
5 production, (4) approving the script and character-generated text, (5) confirming the
6 production date seven days prior to air, (6) editing the program five days prior to air, and
7 (7) delivering two different shows to each station each week one day prior to air.
8 Currently, HomesOnTV can produce a show within a ten-day period and still allow for
9 last-minute changes.

10 Closed captioning companies, however, such as Transfer West Duplication, require
11 an additional two weeks to equip each episode with closed captioning.” Closed
12 captioning requirements could force HomesOnTV’s production schedule to jump to a
13 twenty-day period. Additionally, once a show has been closed captioned, it is virtually
14 impossible to make any last-minute changes to the text in response to shifts in the market
15 or to sales of new homes. As a result of the closed captioning production delay,
16 HomesOnTV would consistently advertise communities that were already sold-out or
17 would provide other outdated or misleading information regarding prices, amenities,
18 incentive, disclaimers, or options.

19 A twenty-day delay would prohibit HomesOnTV from making essential updates to
20 on screen information. HomesOnTV’s competitive edge would be lost, discouraging
21 builders from purchasing programming time. All viewers, including persons with hearing
22 disabilities, would receive inaccurate information. Therefore, closed captioning
23 requirements would impose an undue operational burden.

24
25
26 ²¹ *Id.*

1 **c. Third Factor: HomesOnTV's Financial Resources.**

2 In determining whether the closed captioning requirements impose an undue
3 burden, the Commission must consider the resources that the petitioner has chosen to
4 devote to the program in the context of the overall budget and revenues of the petitioner.²²
5 In the attached affidavit, HomesOnTV has provided sufficient evidence of its finances,
6 including calculations of the economic impact that closed captioning will have on its
7 annual budget.²³ Closed captioning costs could impose an annual financial burden of
8 \$59,800.00. This annual cost represents five percent of HomesOnTV's 2006 gross
9 revenues and eight percent of its 2006 net gain.²⁴ Closed captioning costs could impose an
10 even greater burden in the year to come because HomesOnTV's 2007 gross revenues are
11 estimated to be thirty to forty percent less than in 2006.²⁵ In addition to falling revenues,
12 sudden shifts in competition have caused a 25% increase in show talent costs, a 15%
13 increase for television time slot costs (largest single expenditure), a 100% increase in
14 outdoor billboard costs, an expected 8% increase in overall production costs, and an
15 expected 60% increase in website and software design.²⁶ These additional financial
16 commitments, combined with the financial burden imposed by closed captioning costs,
17 could force HomesOnTV off the air by 2008.

18 **III. Conclusion**

19 HomesOnTV believes that it qualifies under the primarily textual, self-
20 implementing exemption set forth in 47 C.F.R. Section 79.1(d)(4). If, however, the
21

22 ²² *Report and Order*, 13 FCC Rcd at 3366.

23 ²³ Affidavit at ¶¶ 3, 6, 7.

24 ²⁴ Affidavit at ¶ 6.

25 ²⁵ Affidavit at ¶ 7.

26 ²⁶ *Id.*

Commission finds that HomesOnTV does not qualify under this self-implementing exemption, HomesOnTV respectfully requests that the Commission exempt its programming from closed captioning requirements under the Undue Burden Exemption set forth in 47 C.F.R. Section 79.1(f).

RESPECTFULLY SUBMITTED this 3rd day of May, 2007.

LEWIS AND ROCA LLP



Thomas H. Campbell
Benjamin W. Graff
40 N. Central Avenue
Phoenix, Arizona 85004

Attorneys for HomesOnTV.com

ORIGINAL and two (2) copies

of the foregoing filed this

3rd day of May, 2007, with:

Ms. Marlene H. Dortch
Commission's Secretary
Office of the Secretary
Federal Communications Commission
Attn: CGB, Room 3-B431
445 12th Street, S.W.
Washington, D.C. 20554

COPY of the foregoing mailed this

3rd day of May, 2007, to:

Amelia Brown, Disability Rights Office
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commeriters:

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2 President

3 Association of Late-Deafened Adults, Inc.

4 8038 Macintosh Lane

5 Rockford, IL 61107

6 Jenifer Simpson

7 Senior Director, Telecommunications and Technology Policy

8 American Association of People with Disabilities

9 1629 K Street, NW, Suite 503

10 Washington, DC 20006

11 Ed Kelly

12 Chair

13 California Coalition of Agencies Service the Deaf and Hard of Hearing

14 6022 Cerritos Avenue

15 Cypress, CA 90630

CERTIFICATE OF SERVICE

I, Thomas H. Campbell and I, Benjamin W. Graff, do hereby certify that on May 3, 2007, a copy of the foregoing Reply to the Opposition of Telecommunications for the Deaf and Hard of Hearing, Inc. et al to the Petition for Exemption from Closed Captioning Requirements filed by HomesOnTV, as filed with the Federal Communications Commission in CG Docket No. 06-181, CGB-CC-0177, was served by First Class U.S. mail, postage prepaid, upon the following:

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6022 Cerritos Avenue
Cypress, CA 90630



Thomas H. Campbell
Benjamin W. Graff

EXHIBIT A

Rate Quotes From Transfer West Duplication and Media Images

CC QUOTE**Jeanette Daley**

From: Jeff Chesser [REDACTED] 1
Sent: Monday, February 27, 2006 5:08 PM
To: Jeanette Daley
Subject: Closed Captioning Costs. . . The Home Show" - Las Vegas

e-mailed
MAR 08 2007
FAXED

Jeanette,

e-mailed

As per your request, here is some information and pricing to do closed captioning:

APR 19 2007

FAXED

Far the more than 28 million Americans with hearing impairments, dosed captioning provides a welcome service. With the aid of a dosed captioning decoder, now a standard on most TV's, program dialogue appears as captions at the bottom of the television screen. These captions have a black background which covers up a small portion of the video at the bottom of the Screen so it may interfere with any graphics you may have on the screen.

The dialogue on the program is transcribed into a script and using the time code from the video. the words are printed to correspond with the dialogue.

PRICING:

30 second spot @ \$145.00
5 minutes @ \$225.00
15 minutes @ \$310.00
30 minutes @ \$575.00 ←
45 minutes @ \$850.00
60 minutes @ \$1,095.00
75 minutes @ \$1,325.00
90 minutes @ \$1,550.00
120 minutes @ \$1,995.00

-Price normally does not include tape stock. But with a weekly show. I will include the tape stock at no additional charge.

Jeanette, I hope this gives you some additional information. If you have any questions, please don't hesitate to contact me.

Thanks,

Jeff Chesser
Account Executive
Transfer West Duplication

6171A McLeod Drive
Las Vegas, NV 89120
Phone: (702) 895-9900
FAX: (702) 895-9909
email: jchesser@transferwest.com
website: <http://www.transferwest.com>



CC QUOTE

MEDIA IMAGES

4991 Transamerica Dr. • Columbus, Ohio 43228 • Phone (614) 410-3000 • Fax (614) 410-3001

e-mailed
MAR 08 2007
FAXED

Important Closed Captioning Information

e-mailed
APR 19 2007
FAXED

November 17, 2006

Jeanette Daley
The Home Show
1501 Ten Palms Court
Las Vegas, NV 89117

Dear Jeanette Daley,

Recently you applied to the FCC for an exemption from the closed captioning requirements for your real estate television program. I understand the financial burden this places on your company, however, you may not be aware there is a cost effective alternative to expensive captioning services. Media Images, one of the country's premier media companies, has developed a service available to programmers at very reasonable prices.

Closed Captioning - 30 Minute Program - \$227.00

Closed Captioning - 60 Minute Program - \$337.00

Our easy, cost-effective service will allow you to comply with the FCC closed captioning requirements immediately, or alter your exemption expires. We offer duplication to and from most popular tape formats along with fast turn around times. This special pricing is not published on our website. To begin using our service, please call us at (614) 410-3000 or visit our website at www.SmartCaptioning.com.

Kind Regards,

Adam R. Grover

Media Images Inc.
4991 Transamerica Dr.
Columbus, OH 43228
Phone: (614) 410-3000 ext. 104
Fax: (614) 410-3001
www.SmartCaptioning.com

CC QUOTE



MEDIA IMAGES

4991 Transamerica Dr. • Columbus, Ohio 43228 • Phone (614) 410-3000 • Fax (614) 410-3001

Important Closed Captioning Reminder

April 5, 2007

Jeanette Daley
The Home Show
1501 Ten Palms Court
Las Vegas, NV 89117

Dear Ms. Daley,

Recently you applied to the FCC for an exemption from the closed Captioning requirements for your red estate television program. I understand the financial burden this places on your company, however, you may not be aware there is a cost effective alternative to expensive captioning services. Media Images, one of the country's premier media companies, has developed a service available to programmers at very reasonable prices.

Closed Captioning - 30 Minute Program - \$227.00 — $\times 2.5 \text{ HOURS P/WK} \times 454 \text{ P/WK} \times 52 \text{ wks} = 23,608 \text{ ANNUAL COST}$
Closed Captioning - 60 Minute Program - \$337.00 To Home Show TV.

Our easy, cost-effective service will allow you to comply with the FCC closed captioning requirements immediately, or after your exemption expires. We offer duplication to and from most popular tape formats along with fast turn around times. This special pricing is not published on our website. To begin using our service, please call us at (614) 410-3000 or visit our website at www.SmartCaptioning.com.

Kind Regards,

Adam R. Grover

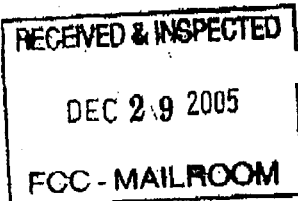
Media Images Inc.
4991 Transamerica Dr.
Columbus, OH 43228
Phone: (614) 410-3000 ext. 104
Fax: (614) 410-3001
www.SmartCaptioning.com

EXHIBIT B

HomesOnTV's Petition

JEANETTE DALEY - Producer
THE HOME SHOW, Las Vegas
 (702) 870-5000 Fax 870-5023
Jeanette@LasVegasHomeShow.com

The Home Show/
 1501 Ten Palms Court:
 Las Vegas NV 89117



Las Vegas Home Show.com
 On Television EVERYDAY!
 SATURDAY..... 10a.... UPN25 - Cox14
 SUNDAY..... 9a.... ABC13 - Cox13 HD 732
 SUNDAY..... 6:30p.... NBC 3 - Cox 3 HD 733
 MONDAY..... 1a.... UPN25 - Cox14
 TUESDAY..... 1a.... UPN25 - Cox14
 WEDNESDAY..... 1a.... UPN25 - Cox14
 THURSDAY..... 1a.... UPN25 - Cox14
 FRIDAY..... 1a.... UPN25 - Cox14

12-27-05

SENT THIS DPTE Certified Mail 7004 2510 0000 5518 6767

To: Commission's Secretary
 Office of the Secretary
 Federal Communications Commission
 Attn: CGB Room 3-B431
 445 12th Street SW
 Washington DC 20554
 (202) 418-7092

Re: CLOSED CAPTIONING - Request for Exemption

Program: **THE HOME SHOW, Las Vegas Nevada**
 Content: Visually tour New and Resale homes for sale in the Las Vegas area
 30-minute Weekly Program airing in the Las Vegas DMA 52-weeks a year

To Whom It May Concern:

We respectfully request exempt status on Closed Captioning (CC) for the following reasons:

1. We produce two (2) new show Editions each week (4 airings each). Our shows air 52-weeks a year in the Las Vegas market. Considering that the cost of providing CC for one show Edition is already prohibitive for us, add the 2nd Edition and it presents a double burden.
2. IMPORTANT NOTE: All home details including price, location, amenities, Incentives and disclaimers (if any) are shown on video via character-generated text as we tour each home. Providing CC would be redundant.
3. As we understand it, there's a \$3-million gross revenue cap involved in the process of deciding exemption. Our annual revenue doesn't even begin to reach that amount. Financially, if we are required to provide CC 52-weeks a year on both Editions each week, it would most definitely affect the continuation of our 30-minute local program which has been on-air serving Southern Nevadans in their search for new homes in our area for the past 10 years.

Please consider our exempt status as the ramifications of added expense and staff would put our local program in serious jeopardy.

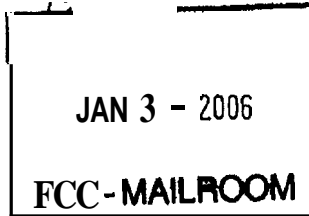
Sincerely,

JEANETTE DALEY
 Producer
 The Home Show, Las Vegas

CGB-CC-0177

1501 Ten Palms Court
Las Vegas NV 89117

12-31-05



Las Vegas Home Show . com

On Television EVERYDAY!

SATURDAY.....	10a....	UPN25 -	Cox14
SUNDAY.....	9a....	ABC13 -	Cox13 HD 732
SUNDAY.....	6:30p....	NBC 3 -	Cox 3 HD 733
MONDAY.....	1a....	UPN25 -	Cox14
TUESDAY.....	1a....	UPN25 -	Cox14

Re: CLOSED CAPTIONING - Undue Burden Exemption Request


Program: **THE HOWE SHOW, Las Vegas Nevada**
Content: Visually tour New and Resale homes for sale in the Las Vegas area
30-minute Weekly Program, 2 new shows every week, 52-weeks a year

To Whom It May Concern:

As Program Producer, I am seeking Exemption Status on Closed Captioning requirements for the following reasons:

1. Our shows take a video tour of new and resale homes in the Las Vegas market.
2. I feel that I already provide a substitute for the Closed Captioning requirements as I go to great lengths to provide all home details including price, location, amenities, incentives and disclaimers (if any) that are shown on Video via character-generated text as we tour each home, Providing Closed Captioning would be wholly redundant.
3. Because homes sell quickly in Las Vegas, I produce two (2) new show Editions every week. Shows air 52-weeks a year in Las Vegas.
4. I have recently checked into the cost of providing Closed Captioning on two fronts; outside provider which is very costly and with my distributors which is a little less. Either way, it's still very expensive for two new shows a week and it would present an undue financial burden as details of each home are already provided in text-on-screen as we tour new and resale homes.

Respectfully,


JEANETTE DALEY
Producer
The Home Show
Las Vegas NV

- COPY -

JEANETTE DALEY - Producer
THE HOME SHOW, Las Vegas
(702) 870-5000 Fax 870-5023
Jeanette@LasVegasHomeShow.com
1501 Ten Palms Court
Las Vegas NV 891 17

CGB00-0177



THE HOME SHOW Weekly Showtimes:
SAT 10:00 am UPN TV 25 Cox 14
SUN 9:00 am ABC TV 13 Cox 13 HD 733
SUN 6:30 pm NBC TV 3 Cox 3 HD 733
MON 1:00 am UPN TV 25 Cox 14
TUE 1:00 am UPN TV 25 Cox 14
WED 1:00 am UPN TV 25 Cox 14
THU 1:00 am UPN TV 25 Cox 14
FRI 1:00 am UPN TV 25 Cox 14

3-6-06 - SENT THIS DATE Regular Postal Mail

To: Commission's Secretary
Office of the Secretary
Federal Communications Commission
Attn: CGB Room 3-B431
445 12th Street SW
Washington DC 20554
(202) 418-7092

RECEIVED

MAR 21 2006

Distribution Center

Re: CLOSED CAPTIONING - Request for Exemption under Section 79

Program: **THE HOME SHOW**, Las Vegas Nevada
Content: Visually tour New and Resale homes for sale in the Las Vegas NV area
30-minute Weekly Program 52-weeks a year, 2 Shows a week airing 4-times each

To Whom It May Concern:

We respectfully request exempt status on Closed Captioning (CC) for the following reasons:

1. SUPPORTING TEXT ON TV:

Our real estate TV program in Las Vegas includes all new and resale home details including price, location, amenities, incentives and disclaimers (if any) shown on video via character-generated text as we tour each home. Providing CC would be redundant and would cover-up supporting text on screen. For your video review, please log on to LasVegasHomeShow.com, 'Search By Flap' page to view all streaming pieces on our Shows which change weekly.

2. UNDUE BURDEN - FINANCIAL:

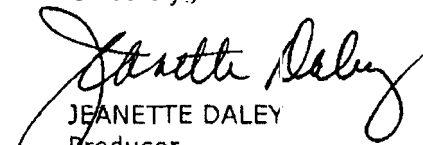
We produce two (2) new show Editions each week (4 airings each). Our shows air 52-weeks a year. The cost of closed-captioning for 2 shows a week, 52wks a year @ \$575 per show would add \$59,800 a year to our production costs (see attached Rate Card from Transfer West, Las Vegas). This would cause us to incur costs we cannot recover and could put us in jeopardy of going dark after 10 years on-air.

3. UNDUE BURDEN - SHOW DEADLINES:

Transfer West requires a 2-week turnaround to close-caption. Our production schedule has always been 10-days out for new and resale production, we re-edit 2 Shows weekly and deliver to Stations for air. Instead, CC would force our deadline schedule to nearly 4-weeks out. In a fast-moving market where homes sell quickly, we would be unable to eliminate any "Sold" homes prior to air or change prices if any. A "Sold" home is more likely to occur within 4wks than 10days and could cause a "Sold" home to be unwillingly advertised.

Please consider our exempt status as the ramifications of added expense and deadlines would put our local program in serious jeopardy.

Sincerely,


JEANETTE DALEY
Producer
The Home Show, Las Vegas

■
Jeanette Daley

From: Jeff Chesser[jchesser@transferwest.com]
Sent: Monday, February 27, 2006 5:08 PM
To: Jeanette Daley
Subject: Closed Captioning Costs . . . "The Home Show" - Las Vegas

Jeanette,

As per your request, here is some information and pricing to do closed captioning:

For the more than 28 million Americans with hearing impairments, closed captioning provides a welcome service. With the aid of a closed captioning decoder, now a standard on most TV's, program dialogue appears as captions at the bottom of the television screen. These captions have a black background which covers up a small portion of the video at the bottom of the screen so it may interfere with any graphics you may have on the screen.

The dialogue on the program is transcribed into a script and using the time code from the video, the words are printed to correspond with the dialogue.

PRICING:

30 second spot @ \$145.00
5 minutes @ \$225.00
15 minutes @ \$310.00
30 minutes @ \$575.00
45 minutes @ \$850.00
60 minutes @ \$1,095.00
75 minutes @ \$1,325.00
90 minutes @ \$1,550.00
120 minutes @ \$1,995.00

-Price normally does not include tape stock. But with a weekly show, I will include the tape stock at no additional charge.

Jeanette, I hope this gives you some additional information. If you have any questions, please don't hesitate to contact me.

Thanks,

Jeff Chesser
Account Executive
Transfer West Duplication

6171A McLeod Drive
Las Vegas, NV 89120
Phone: (702) 895.9900
FAX: (702) 895-9909
email: jchesser@transferwest.com
website: <http://www.transferwest.com>

2/27/2006

EXHIBIT C

Tentative Closed Captioning Pricing Scheme For KVBC TV

From: NASBY, JOANNE [mailto:JNASBY@kvbc.com]
Sent: Tuesday, May 01, 2007 5:38 PM
To: Jeanette Daley
Cc: HERREN, KILLY
Subject: CLOSED CAPTIONING

Hi Jeanette!

Kelly is out of the office this afternoon, but tells me you have some questions on closed captioning.

KVBC can (and does) take care of some closed captioning needs for half hour programs. There is a charge of **\$125** per hour, and each half hour program takes one hour of production time. So....to close caption both your **Sa 730pm** and **Su 930am** programs, the cost would be \$250 per week. We would need the tapes in-house no later than 2pm on Thursday for weekend airing.

Hope that answers your questions, but please give me a call if you need anything else.

Joanne Nasby
General Sales Manager
KVBC TV
1500 Foremaster Lane
Las Vegas, NV **89101**
702-657-3427 phone
702-657-3208 fax
email: jnasby@kvbc.com

EXHIBIT D

Affidavit of Jeanette Daley, Executive Producer of HomesOnTV.Com

1
2
3
4 **BEFORE THE FEDERAL COMMUNICATION COMMISSION**
5 **Washington, D.C. 20554**

6)
7 **IN THE MATTER OF HOMESONTV'S**)
8 **PETITION FOR EXEMPTION FROM**)
9 **CLOSED CAPTIONING**)
10 **REQUIREMENTS**)

Docket No. 06-181

Case ID No. CGB-CC-0177

11 **AFFIDAVIT OF JEANETTE DALEY IN SUPPORT OF PETITION FOR**
12 **EXEMPTION OF HOMESONTV FROM CLOSED CAPTIONING**
13 **REQUIREMENTS**

13 **STATE OF NEVADA**)
14 **COUNTY OF CLARK**) ss.

15 I, Jeanette Daley, being duly sworn, depose and state:

16 1. I am the Executive Producer for HomesOnTV (previously "The Home
17 Show") in Las Vegas, Nevada. The Home Show first aired in December of 1996. The
18 show aired under its new name, "HomesOnTV," on October 14, 2006. HomesOnTV
19 provides significant employment opportunities to local independent contractors including
20 production cameramen, editors, on-air talent, announcers, web designers, and web
21 software programmers. HomesOnTV provides a video tour of new homes in the Las
22 Vegas market. HomesOnTV provides information, including price, location, amenities,
23 incentives, and disclaimers by video via character-generated text as the show provides a
24 tour of community model homes. Streaming video examples of HomesOnTV can be
25 viewed at HomesOnTV.com.
26

1 2. Homes sell quickly in Las Vegas. In order to keep up with the demand, I
2 must produce two (2) new show Editions, for eight (8) separate television time slots, each
3 week. The shows air fifty-two (52) weeks per year in Las Vegas. A total of one-hundred
4 and four (104) shows will be produced in 2007.

5 3. The cost to produce each edition of HomesOnTV in 2007 is \$8,800. At two
6 editions per week, this adds up to a weekly cost of \$17,600. With the show airing fifty-
7 two (52) weeks per year, the annual cost to produce HomesOnTV in 2007 will be
8 \$915,200. HomesOnTV's gross revenue in 2006 was \$1,192,099.80. I strongly anticipate
9 that our 2007 gross revenues will be at least thirty to forty percent (30% - 40%) less than
10 2006 gross revenues while production costs will increase.

11 4. Upon learning of the Commission's rules requiring closed captioning of all
12 English language programming, I immediately began to research the costs of purchasing
13 closed captioning services and whether HomesOnTV qualified under any of the
14 exemptions from the closed captioning requirements.

15 5. I believe that HomesOnTV is exempt under the primarily textual
16 programming self-implementing exemption found in 47 C.F.R. Section 79.1(d)(4). No
17 critical portions of information conveyed during HomesOnTV are lost in the absence of
18 closed captioning. HomesOnTV displays all pertinent information on screen via
19 character-generated text, including property descriptions (i.e., specific addresses via the
20 website, community name, phone number, price, type of home such as single family
21 dwellings, condos, etc., number of beds, number of bathrooms, square footage, location,
22 area, options, details, and amenities), price, incentives, disclaimers, and each builder's
23 website address. In fact, 98% of all home details communicated during the show are in
24 text on screen as well as streamed on the internet. All essential information conveyed to a
25 television viewer already appears on screen as text. Therefore, no actual harm is or will be
26 experienced by persons with hearing disabilities.

1 6. Even though I believe that HomesOnTV is exempt under the primarily
2 textual programming self-implementing exemption, out of an abundance of caution,
3 HomesOnTV also applied for an exemption pursuant to 47 C.F.R. Section 79.1(f) because
4 use of closed captioning would impose undue economic and operational burdens. In
5 support of this request, HomesOnTV has provided information to demonstrate, and for the
6 Commission to determine, that the program meets the undue burden standard for granting
7 its Petition. We produce two (2) new show Editions each week, four (4) airings each,
8 totaling eight (8) shows in different time slots. Our shows air fifty-two (52) weeks per
9 year. Closed captioning costs between \$227.00 and \$575.00 per show. (*See Exhibit A:*
10 *Rate Quotes from Transfer West Duplication and Media Images*). If this cost was applied
11 to our two shows per week, fifty-two weeks per year, the total financial burden of closed
12 captioning could add \$59,800 a year to our production costs. \$59,800 amounts to five
13 percent (5%) of HomesOnTV's gross revenues in 2006. We would not be able to recover
14 the costs incurred by closed captioning requirements.

15 7. After eleven years on the air, the imposition of additional closed captioning
16 costs could force HomesOnTV off the air. In comparison to our 2006 costs, changes
17 throughout the industry have caused 2007 costs to rise dramatically. In early 2006,
18 HomesOnTV was the only real estate television show premiering in Las Vegas. Shortly
19 after the Fourth quarter of 2006, two additional and similar shows began to air:
20 HotOnHomes and Premier New Homes. The shift in competition in 2007 has forced
21 HomesOnTV to purchase an additional NBC TV3 timeslot and incur additional
22 operational and production costs. For example, in 2007, HomesOnTV has experienced a
23 25% increase in show talent costs, a 15% increase for television time slot costs (largest
24 single expenditure), a 100% increase in outdoor billboard costs, an expected 8% increase
25 in overall production costs, and an expected 60% increase in website and software design.
26

1 These additional financial commitments, combined with the financial burden imposed by
2 closed captioning costs, could force HomesOnTV off the air.


3 8. After seeking two (2) competitive bids from outside providers (Transfer
4 West Duplication and Media Images), I next sought assistance from my distributors. My
5 distributors have refused to cover the costs for closed captioning. One distributor has
6 presented a tentative pricing scheme for closed captioning that would be less than both of
7 the outside providers' quotes. But the cost of acquiring closed captioning through the
8 distributor would still present undue financial and operational burdens upon HomesOnTV.

9 9. In addition to severe financial burdens, closed captioning requirements
10 would impose an undue burden upon the operation of HomesOnTV. First, the bars of text
11 created by closed captioning would block critical character-generated information
12 describing each property. Second, closed captioning would force our production schedule
13 to jump from a ten (10) day period, to a seventeen to twenty (17-20) day period because
14 closed captioning providers, such as Transfer West Duplication, require an additional two
15 weeks to equip each episode with closed captioning. The Las Vegas market sells homes
16 very quickly. As a result of the closed captioning production delay, HomesOnTV would
17 consistently advertise communities that were already sold-out or would provide outdated
18 and misleading information. HomesOnTV also sustains a competitive edge because of its
19 ability to make last-minute adjustments to descriptive information on homes as sudden
20 changes to the market or properties occur. A twenty (20) day delay, caused by closed
21 captioning requirements, would prohibit HomesOnTV from making essential updates to
22 on screen information. Therefore, closed captioning requirements would create an undue
23 operational burden and would result in the dissemination of inaccurate or outdated
24 information to television viewers, including persons with hearing disabilities.

25 10. HomesOnTV uses mechanisms that constitute a reasonable substitute for
26 the closed captioning requirements. Namely, HomesOnTV's use of character-generated

text functions as a graphic display of the content of the audio portion of the programming. HomesOnTV's current methods of video communication make its programming more readily accessible to persons with hearing disabilities. The character-generated text is an effective means of conveying HomesOnTV's critical information to persons with hearing disabilities that does not present the same financial and operational undue burdens as closed captioning requirements.

Dated this 2nd day of May, 2007.



Jeanette Daley

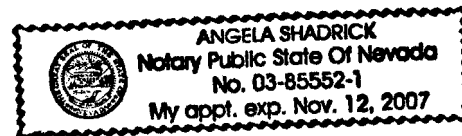
STATE OF NEVADA)
COUNTY OF CLARK) ss.

SUBSCRIBED AND SWORN TO before me this 2nd day of May, 2007 by Jeanette Daley, who certifies that the foregoing is true and correct to best of her knowledge and belief.

Witness my hand and official seal.



Notary Public



My commission expires:

NOVEMBER 12, 2007